UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-5577

EDWARD H. FLINT, Plaintiff-Appellant,

v.

JAMES SHAKE, Judge;
AUDRA ECKERLE,Judge;
ANN O'MALLEY SHAKE, Judge
Defendants-Appellees,

and

JANE DOES; JOHN DOES, Defendants,

On Appeal from the United States District Court for the Western District of Kentucky

FILED: MAY 6, 2010

Before: MERRITT, MARTIN, and COLE, Circuit Judges.

Edward H. Flint petitions the court to rehear its order of December 30, 2009, affirming a district court order dismissing his civil rights complaint.

Upon review, the petition for rehearing is denied. We did not misapprehend or overlook any point of law or fact when we issuedd our prior order. Fed. R. App. P. 40(a).

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

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v.
JAMES SHAKE, Judge;
AUDRA ECKERLE, Judge;
ANN O'MALLEY SHAKE, Judge,
Defendants-Appellees,
and
JANE DOES; JOHN DOES, Defendants,

On Appeal from the United States District Court for the Western District of Kentucky

FILED: JANUARY 21, 2010

Before: MERRITT, MARTIN, and COLE, Circuit Judges.

Edward H. Flint, proceeding pro se, appeals from a district court judgment dismissing his civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon Examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and equitable relief, Flint sued three judges (James Shake, Audra Eckerle, and Ann O'Malley Shake) of the Jefferson County, Kentucky, Circuit Court, alleging that the defendants violated his rights by transferring his civil case between divisions without a proper reason and in violation of court rules.

He claimed that the defendants' conduct violated his "judicial right" and his equal protection rights. The district court granted the defendants' motions to dismiss, concluding that they were entitled to absolute judicial immunity for the actions taken in the scope of their official duties.

On appeal, Flint reasserts his claims that the defendants violated his rights by transferring his civil case between divisions and judges without reason and in violation of court rules.

Upon review, we conclude that the district court properly dismissed Flint's complaint. We review de novo and order dismissing a suit for failure to state a claim upon which relief may be granted. *See Fieger v. U.S. Attorney Gen.*, 542 F.3d 1111, 1116 (6th Cir. 2008). "Construing all well-pleaded allegations in the complaint as true, the Court may only dismiss if 'it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief.'" *Id* (quoting *Downie v. City of Middleburg Heights*, 301 F.3d 688, 693 (6th Cir. 2002)).

here, the defendants are entitled to judicial immunity. The Supreme Court has explicitly stated that a judge will not be deprived of immunity because the action he or she took was in error, was done maliciously, or was in excess of his or her authority. *See Stump v. Sparkman*, 435, U.S. 349, 356-57 (1978). Absolute judicial immunity is overcome only when a judge engages in non-judicial actions or when the judge's actions, though judicial in nature, are taken in complete absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991).

"Absolute judicial immunity attaches only to actions undertaken in a judicial capacity." *Barnes v. Winchell*, 105 F.3d 1111, 1116 (6th Cir. 1997) (internal

quotations omitted). "Whether an act is judicial depends on the nature and function of the act, not the act itself," *Id.* In examining he functions normally performed by a judge, courts have that judicial acts involve resolving disputes between parties who have invoked the jurisdiction of the court. *Id.* The actions complained of here, i.e., transferring cases between divisions and judges, clearly involve judicial decisions in the managing of the court's docket. Flint does not dispute that the judges have the authority to transfer cases; he merely argues that it was done improperly in his case and that the transfers were motivated by the judges' desire to "impede" him. However, as stated above, a judge will not be deprived of immunity because the action he or she took was in error, was done maliciously, or was in excess of his or her authority. *See Stump*, 435 U.S. at 356-57. Hence, the district court properly concluded that the defendants were entitled to judicial immunity.

Accordingly, we affirm the district court's judgment. Rule 34 (j)(2)(C), Rules of the Sixth Circuit.

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE

CIVIL ACTION NO. 3:09CV-116-H

EDWARD H. FLINT, Plaintiff-Appellant,

v.

JUDGE JAMES SHAKE, et al.

Defendants-Appellees,

MEMORANDUM OPINION AND ORDER

FILED: April 27, 2009

The three Defendants, Judges James Shake, Audra Eckerle and Ann O'Malley Shake, have each moved for dismissal of all claims against them. The complaint alleges that these judges participated in one way or another in entering orders and transferring cases without any proper legal basis.

Judges are protected by absolute immunity for their judicial acts under both state law and in federal civil rights suits. In order to overcome a judicial immunity defense, Plaintiff must allege facts that would demonstrate that a judge's acts were not judicial in nature or that the judge acted "in clear absence of . . . jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 357 (1978). Even assuming for the purpose of this motion that plaintiff's allegations were true, Plaintiff cannot meet this burden because he fails to set forth in his complaint or response to the pending motions any facts to support his argument that any of Defendants were without jurisdiction to act in their capacities as a judge.

A judge is immune, under Kentucky law, from personal liability for those acts undertaken while that judge has jurisdiction over a case. Even when jurisdiction is contrary to law, judicial immunity still applies. *City of Louisville v. Bergel,* 610 S.W.2d 292, 293 (Ky. 1980). The question of whether Plaintiff's civil lawsuit was improperly transferred between judges is irrelevant when determining whether the actions a judge has taken were "judicial" in nature. The Kentucky Supreme Court held in *Baker v. Fletcher,* that a judicial act is defined as "any act that is of the nature normally performed by a judge and one in which the parties dealt with the judge in his official capacity." 204 S.W.39 589, 595 (Ky. 2006).

The general actions about which Plaintiff complains in this complaint are routine court activities, such as transferring cases from one judge to another. Judges routinely accept cases transferred to them from other divisions within a circuit court and make substantive rulings on motions presented to them. Even if accepting jurisdiction of Plaintiff's civil lawsuit was in violation of a court rule as Plaintiff contends, the act of doing so still meets the definition of "judicial act" the Kentucky Supreme Court articulated in the Baker case.

For these reasons, Plaintiff cannot state a cause of action against any of the judges in connection with the transfer of Plaintiff's case.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the motion of Defendants to dismiss is SUSTAINED and the claims against Defendants are DISMISSED WITH PREJUDICE.

This is a final order.

/s/ John G. Heyburn II, Judge
United States District Court

cc: Mr. Edward H. Flint, *Pro Se*
Counsel of Record

SUPREME COURT OF KENTUCKY

ORDER

IN RE: ORDER APPROVING THE RULES OF PRACTICE AND PROCEDURE OF THE THIRTIETH JUDICIAL CIRCUIT, JEFFERSON CIRCUIT COURT

ENTERED: July 11, 2006

Upon recommendation of the Chief Judge of the Thirtieth Judicial Circuit, and being otherwise sufficiently advised,

The attached rules of Practice and Procedure for the Thirtieth Judicial Circuit, Jefferson Circuit Court, are hereby approved. This Order shall be effective as of the date of this Order, and shall remain in effect until further orders of this Court.

/s/
CHIEF JUSTICE

RULE 11 ALLOCATION OF CASES, DISQUALIFICATION OF JUDGES

1101 Method of Allottment.
All cases shall be allotted equally and at random among the thirteen (13) divisions of the Court. However, the Chief Judge may receive a twenty-five percent (25%) reduction in criminal and civil cases assigned. Also, the Drug Court Judge may receive a 25% reduction of criminal cases assigned.

A. Civil Cases. The automated case register in the Circuit Court Clerk's Office assigns all District Court Appeals and all other civil cases to the various divisions of the Court. The register has been programmed by the AOC to ensure both the randomness of the assignments and the equal distribution of cases.

B. Criminal Cases. A stack of shuffled cards containing an equal number of cards marked for each of the thirteen (13) divisions, less the 25% case reductions allocated to the Chief and Drug Court Judges, shall be dropped in a drum. To further ensure randomness and equity of caseload, a separate drum is utilized for the assignment of murder indictments. The Grand Jury Foreperson, in open court, shall pull a card from the appropriate drum assigning the case to a division. The division shall be written on the indictment and initialed by the Judge in open court. Indictments containing only a Persistent Felony Offender Charge shall be automatically assigned to the Court where the original indictment was assigned.

C. Informations are presented by the Commonwealth Attorney's Office once weekly and are assigned by random draw to the thirteen divisions of Circuit Court in the Court Administrator's Office. They are initialed by an administrator.

1102 Refiled Cases.

A. Civil Cases. Whenever a case has been dismissed without prejudice and is refiled, the parties shall, after allotment, have the case transferred to that division from which it was dismissed. Whenever any Judge discovers the allotment to her division of a case so dismissed from another division, the Judge shall immediately transfer the case to the division from which it was dismissed.

B. Criminal Cases. Whenever a case has been dismissed and later presented to the Grand Jury for re-indictment, the Judge shall reassign the case to the original Trial Court. If a re-indictment or subsequent of the same person arises our of the same transaction or occurrence, the case shall be assigned to the senior action.

1103 Disqualification of Judge.

If a judge is disqualified pursuant to KRS 26A.-15, the case shall be randomly reallotted to another member of the Jefferson Circuit Bench. If all the judges of the Jefferson Circuit Bench are disqualified, the Chief Regional Judge shall certify the need to assign a special judge.
26A.015 Disqualification of justice or judge of the Court of Justice, or master commissioner.

1. For the purposes of this section the following words or phrases shall have the meaning indicated:
   (a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
   (b) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian;
   (c) Financial interest" means ownership of a legal or equitable interest however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
      1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest: only if the outcome of the proceeding could substantially affect the value of the interest;
      2. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.
2. Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:
   (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding. Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom

he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner, or such lawyer has been a material witness concerning the matter in controversy;

(b) Where he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a pecuniary or proprietary interest in the subject matter in controversy or in party to the proceeding;

(c) Where he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

1. Is a party to the proceeding, or an officer, director, or trustee of a party;
2. Is acting as a lawyer in the proceeding and the disqualification is not waived by stipulation of counsel in the proceeding filed therein;
3. is known by the judge or master commissioner to have an interest that could be substantially affected by the outcome of the proceeding;
4. Is to the knowledge of the judge or master commissioner likely to be material witness in the proceeding.

(e) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

(3) (a) Any justice or judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.

(b) Any master commissioner disqualified under the provisions of this section or unable to discharge the duties of his office for any other reason shall be replaced by a special commissioner who shall be appointed by the judge of the court before

whom the action is pending. The special commissioner shall meet the same qualifications as a master commissioner and shall take an oath and execute a bond as the regular commissioner is required to do

Effective: July 1, 1982

History: Amended 1982 Ky, Acts ch. 141, sec. 41, effective July 1, 1982. — Created 1976 (1st Extra. Sess.) Ky, Acts ch. 22, sec. 4.

Note: 1980 Ky. Acts ch. 396, sec. 44 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY

JUDICIAL CONDUCT COMMISSION

SCR 4.300 Kentucky Code of judicial Conduct

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PREAMBLE

CANON 1
A judge shall uphold the integrity and independence of the judiciary.

CANON 2

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

CANON 3

A judge shall perform the duties of judicial office impartially and diligently.

CANON 4

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

CANON 5

A judge or judicial candidate shall refrain from inappropriate political activity.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

PREAMBLE

Our Legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American and Kentucky concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, A Terminology Section, An Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding.